

**REMARKS**

Claims 1-21 have been canceled. New claims 22-45 have been added. It should be appreciated that new claims 22-45 merely clarify the invention as disclosed by the Applicant, and are consistent with the specification and drawings.

The specification has been amended to indicate that this application now is a continuation of U.S. Patent Application Serial No. 10/292,176, which is a continuation of U.S. Patent Number 6,513,532 to Mault. There is common inventorship between the current application, and U.S. Patent Application Serial No. 10/292,176, and U.S. Patent Number 6,513,532. In addition, the subject matter of the present invention is sufficiently disclosed in U.S. Patent Application Serial No. 10/292,176.

Claims 1-5, 7-10, 12, 15-19 and 21 were rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al., U.S. Publication No. 2001/004970, and which recently issued as U.S. Patent Number 6,513,532. Applicant respectfully traverses this rejection.

The present application is now a continuation of U.S. Patent Application Serial No. 10/292,176, which is a continuation of U.S. Patent Number 6,513,532 all to Mault. Therefore, it is respectfully submitted that independent claims 22, 34 and 41 and the claims dependent therefrom overcome this rejection under 35 U.S.C. 102(e) and are allowable over this rejection.

Claims 1, 3-6, 9-14, 19 and 20 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2002/0027164 by Mault et al. Applicant respectfully traverses this rejection.

U.S. Patent Application Publication 2002/0027164 discloses a portable computing apparatus 10 for assisting a user in monitoring the consumption of consumable items. The apparatus 10 includes a housing 11, a storage device for storing data, an item identification

input means 13 for inputting item identification information identifying the items consumed and to be consumed by the user and a display. The apparatus further includes a processor 31 that receives the item-identification information and processes that information with respect to the data stored in the storage device to maintain a log of the items as they are consumed, to prepare a list of the items to be reordered and to selectively display the log of consumed items and the list of items to be reordered.

A portable computing apparatus 40 for monitoring food consumption is also disclosed. This apparatus 40 has a housing, a storage device for storing data regarding food items, an image sensing device 43 for sensing the image of an item to be consumed or the food package, a display and a processor that processes the sensing image to identify the food item for use in maintaining a log of the items as they are consumed.

The method of diet management includes the steps of recording an optical image of the food to be consumed by the user and analyzing the optical image to identify the constituents of the food and the quantity of each constituent. The method further includes the step of computing the nutritional content of each of the constituents in the food.

In contradistinction, new claims 22, 34 and 41 disclose a body supported device for monitoring a user's activity and condition. The device includes a housing adapted to be supported on a user's body. A timer is disposed in the housing for generating a signal representative of time. The device also includes an activity level sensor disposed in the housing for operatively sensing an activity level of the user, and generating a signal representative of the user's activity level. An activity entry means is supported on the housing, and the user operates the entry means to generate a signal indicating the start and end of the activity. The device further includes a processor within the housing that uses the user activity level signal, time indicating signal and the activity start and end signal in

determining the activity level of the user for a period of time. The activity level for the predetermined period of time is stored in an activity log maintained in the memory. The device still further includes an external display means disposed on the housing for communicating the activity level.

This patent publication, also to Mault, an inventor of the present invention, does not anticipate the claimed invention of claims 22, 34 or 41. Specifically, the invention in this publication merely discloses a monitoring device that includes an image sensing device for sensing the identity of a food, for use in a food log. This is distinguishable from a monitoring device for monitoring the activity level of a user having a processor that utilizes a signal from an activity level sensor and an activity notation control to indicate that the user is engaged in an activity. The processor processes the signal and transmits an output signal to a computing device that is indicative of the activity level of the user and the time duration of the corresponding activity level.

Therefore, it is respectfully submitted that claims 22, 34 and 41 and the claims dependent therefrom overcome the rejection under 35 U.S.C. 102(e) and are allowable over this rejection.

Claims 1-12 and 15-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Root et al. (6,013,007) in view of Bianco (4,855,942). Applicant respectfully traverses this rejection.

U.S. Patent Number 6,013,007 to Root et al. discloses an athletes GPS-based performance monitor 101 for using the position of an athlete while exercising in determining athletic performance and to provide regular performance feedback to the athlete. The monitor includes a global positioning GPS receiver 301 that obtains a series of time-stamped locations indicating the position of the athlete. The monitor 101 also includes a means for

computing athletic performance feedback data from the series of time-stamped locations obtained by the GPS receiver. The monitor 101 further includes a means 112 for presenting the athletic performance feedback data to the athlete. In operation, the athlete turns on the device and sets preferences using menu control buttons 115 and display 112. The device is initialized and a signal is provided to the user. The user begins to exercise, and the GPS receiver module continuously determines the athlete's geographic position and stores it in the memory. Based on the positions and times, performance data is determined and recommendations are made to the user regarding how well the performance targets are met. The performance information can be transmitted to a remote computer. Root et al. '007 does not disclose a system and method of monitoring the activity level of a user using a monitoring device that includes an activity level sensor for sensing the activity level of the user, as disclosed by the Applicant.

U.S. Patent Number 4,855,942 to Bianco discloses a calorie measuring device and method. The apparatus includes a computer means 11, and a pedometer means 31 connected to the computer means 11 for sensing a first signal indicative of the number of steps taken by an individual over a unit of time. The apparatus also includes a switch means for supplying to the computer means 11 electric signals indicative of the stride length of the subject, and subject weight that is utilized by the computer means to derive a second signal indicative of a constant factor indicative of the calories consumed by the subject while traversing a predetermined distance. Using the first and second signal, a third signal is produced indicative of the number of calories consumed by the subject in each unit length of time. The values of the third signal are accumulated to drive a fourth signal indicative of total calories consumed by the subject. The apparatus also includes a display means responsive to this fourth signal.

A method of measuring an approximate number of calories consumed while performing an exercise includes the steps of determining the distance traveled by the subject and entering the weight of the subject into the memory of the computer. The method also includes the steps of activating the computer to store an indication of the number of calories the subject burns in traversing the predetermined distance and calculating the calories consumed by the subject during the cycle time from the stored indication and the distance traveled during the cycle time and accumulating the calculated consumed calories over several consecutive cycle times. Bianco '942 does not disclose a system and method of monitoring the activity level of a user using a monitoring device that includes an activity level sensor, and a notation control and a time indicative signal that is transmitted to a computing device.

None of the references, alone or in combination with each other teach or suggest the claimed invention of new claims 22, 34 or 41. Specifically, the Root et al. '007 reference merely discloses a portable device to be worn while engaged in an activity like running that utilizes a global positioning system transmitter for use in determining the location of the user over a period of time, and using this information to provide performance feedback such as elapsed exercise time, distance covered, average pace or distance to go. Root et al. '007 does not disclose a system and method of monitoring the activity level of a user using a monitoring device that includes an activity level sensor, and a notation control and a time indicative signal that is transmitted to a computing device for use in determining the activity level of the user. The activity level of the user is not the same as the physical location of the user while exercising.

Bianco '942 merely discloses a method of approximating the number of calories consumed by the user while cycling a predetermined distance using the user's weight, sex,

and age. The measuring device is used to measure the distance traveled by the user. Bianco '942 does not disclose a system and method of monitoring the activity level of a user using a monitoring device that includes an activity level sensor, and a notation control and a time indicative signal that is transmitted to a computing device for use in determining the activity level of the user. The activity level of the user is not the same as the physical distance traveled by the user while exercising. In addition, the methodology of Bianco '942 merely provides an approximation of the number of calories consumed by the user, and not an actual measurement.

The combination of references does not render obvious Applicant's invention as claimed in claims 22, 34 or 41. The combination of Root et al. '007 and Bianco '942 would yield a pedometer having a global positioning system for use in determining the physical location of the user while exercising, and the distance covered by the user and an approximation of the calories consumed over a predetermined distance.

This combination of Root et al. '007 and Bianco '942 is distinguishable from Applicant's invention in that the present invention is a monitoring device that is used to monitor the activity level of a user under various conditions, including at rest, while engaged in a stationary activity or while engaged in a mobile activity. Further there is nothing in Root et al. '007 or Bianco et al. '942 to suggest that the measurement of the level of activity of a subject is the same as a measurement of the distance traveled by the user while exercising. The unobviousness of the present invention of claims 22, 34 or 41 is in the use of an activity level sensor and a notation control and a time indicative signal for use in determining the actual energy expenditure of the user. Therefore, it is respectfully submitted that claims 22, 34 and 41 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. 103(a).

Based on the above, Applicants submit that the claims are in a condition for allowance, which allowance is respectfully solicited. If the Examiner finds to the contrary, it is respectfully requested that the undersigned in charge of this application be called at the telephone number given below to resolve any remaining issues.

Respectfully submitted,

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Rainie R. Mills